

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

SHARON SIMANTOV,

Plaintiff and Appellant,

v.

MEGA HOLDING GROUP, LLC,

Defendant and Respondent.

B287068

(Los Angeles County
Super. Ct. No. LC101516)

APPEAL from a judgment of the Superior Court of Los Angeles County, Huey P. Cotton, Jr., Judge. Affirmed.

Law Offices of Michael Poole and Michael Poole for Plaintiff and Appellant.

Beitchman & Zekian, David P. Beitchman, and Shani Kochav for Defendant and Respondent.

Two men disagreed about who owned a building. After trial, the trial court awarded title to plaintiff Sharon Simantov but ruled in favor of defendants Danny Siag and his entity Mega Holding Group, LLC (Mega) on Simantov's other claims. Rents accumulated during the litigation. The court accepted Siag's proposed equitable division of these rents. We affirm.

I

Simantov owned a multi-unit rental property. He fell behind on his mortgage payments and sought help from Danny Siag. Siag and Simantov entered a "Joint Venture Agreement" with Mega. The agreement specified Siag would collect rents and maintain the property.

Simantov sued Siag and Mega to avoid a sale of the property to Siag. Simantov sought a temporary restraining order to impound the rents during the litigation. The trial court granted Simantov's motion in part. It ordered each party to hold collected rents in escrow.

Simantov's second amended complaint added causes of action for damages for fraud, breach of fiduciary duty, and for violating Civil Code section 2945 et seq. and Business and Professions Code section 17200.

The court issued a proposed statement of decision after a two-day bench trial. One proposed finding was for Simantov on his cause of action to void or cancel the quitclaim deed, and another was for Siag on all other causes of action. The statement also proposed permitting Simantov to retain all rents he had collected.

Siag objected, claiming this result was a windfall for Simantov. Siag claimed he was paying expenses to maintain the property. Simantov filed a response to Siag's objection but it

appeared to be merely a rewrite of his earlier motion for summary judgment; it completely failed to address the dispute about rental income.

On the merits, the court entered judgment consistent with its proposed statement of decision: Simantov got his property back, but lost on his claims for money damages. As to rental income, the court agreed with Siag, and ordered the parties to split the rental proceeds 50-50. The court justified this allocation by referring to the terms of the parties' agreement. The court ordered Simantov to pay Siag within 30 days of Siag's full transfer of title to the property to Simantov.

Siag objected again because a 50-50 split did not specify the exact sum owed. Because Simantov had refused to provide Siag with an accounting of the rents Simantov had collected, Siag proposed a rough but feasible alternative: to use the testimony of Alon Simantov, Sharon Simantov's brother, who testified during trial he was collecting "something like" \$3,100 in rent each month. Siag multiplied \$3,100 by the number of months between Simantov's breach of the joint venture agreement and the conclusion of trial. Siag proposed a specific time period based on the evidence. Siag's math yielded a total figure of \$189,100, of which Siag proposed to receive one-half: \$94,550.

Simantov knew of Siag's second objection in which Siag proposed this $\$189,100/2 = \$94,550$ payment. But Simantov again did not respond to the merits of the pertinent debate. The trial court then accepted Siag's proposed sum and amended its judgment to state Simantov owed "damages" of \$94,550 to Siag and Mega.

II

Simantov appeals the amended judgment. He makes two

invalid arguments.

A

First, Simantov argues the trial court erred as a matter of law by awarding “damages” to Siag because Siag did not file a cross-complaint against Simantov. Simantov thus urges us to rule Siag has waived all claims according to Code of Civil Procedure section 426.30.

This argument fails. The trial court ordered parties to hold in escrow all rents collected during the action. As it happened, only Simantov collected rents. Simantov had a practical sort of access to these rents, which his lawyer was supposed to be safeguarding in the lawyer’s escrow account. In fact, Simantov’s brother, Alon, admitted Sharon Simantov was using the rents to pay Sharon Simantov’s lawyer. Simantov never *owned* the rents he was collecting and supposedly preserving according to the trial court’s order. These sums were under court order and court control and the trial court was free to refer to them in any reasonably clear way it wished, as it did.

Simantov relatedly claims the “damages” are excessive and not supported by substantial evidence. This section of his brief does not include a single legal citation. This argument fails. The trial court struggled to find a logical and equitable way to allocate these accumulated rents. There was no abuse of discretion.

The trial court’s amended judgment was quite appropriate on these facts. Simantov refused either to account for the value of the rents he collected or to comment on the court’s calculation of the total rents. The court appropriately exercised its equitable discretion and divided the fruits of the injunction according to the parties’ agreement.

B

Second, Simantov appeals the trial court's denial of his claims for damages by re-arguing Siag was a foreclosure consultant who violated Civil Code section 2945 et seq. by acquiring an interest in Simantov's property. This argument founders because Civil Code section 2945 et seq. applies only to a "residence in foreclosure," as defined in Civil Code section 2945.1, subdivision (f). Such a residence must consist of one- to four-family dwelling units, one of which must be occupied by the owner as their primary residence. (Civ. Code, §1695.1, subd. (b).) Sharon Simantov did not appear or testify at trial; his brother Alon appeared in his place. Alon testified his brother had not lived in the United States since November 2005. The Tarzana property is therefore not Sharon Simantov's primary residence. The trial court properly found Civil Code section 2945 et seq. did not cover Simantov's property.

DISPOSITION

The amended judgment is affirmed. Mega is entitled to costs on appeal.

WILEY, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.